88-309

Supreme Court, U.S.
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No. .....

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1988

WEST COAST TRUCK LINES, INC.,
Petitioner,

VS.

ARCATA COMMUNITY RECYCLING CENTER,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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Question Presented

Whether the rates for the transportation of recyclable materials must be published in the tariff of a motor carrier subject to the jurisdiction of the Interstate Commerce Commission pursuant to the provisions of 49 U.S.C. Sections 10733 and 10761.

The Parties

Petitioner West Coast Truck Lines, Inc. (hereinafter "West Coast" or "WCTL") is an Oregon corporation formerly engaged in for-hire motor carrier transportation in interstate commerce.

Respondent Arcata Community Recycling Center (hereinafter "ACRC") is a non-profit California corporation engaged in the collection and disposition of materials for recycling.

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PETITION FOR WRIT OF CERTIORARI

Opinions Below.

The opinion of the Court of Appeals has been officially reported at 846 F.2d 1239. A copy of the opinion is included at Appendix A, *infra,* pages 1a through 18a.

The order of the United States District Court for the Northern District of California granting the defendant's motion for summary judgment and the judgment thereon filed and entered on or about March 3, 1987 are included at Appendix B, *infra,* pages 1b through 3b.

STATEMENT OF JURISDICTIONAL GROUNDS

The judgment of the Court of Appeals for the Ninth Circuit was dated, filed and entered on May 23, 1988. No petition for rehearing was filed. This Court has jurisdiction to review the judgment under 28 U.S.C. Section 1254(1).

STATUTES INVOLVED

The statutes directly involved are contained in the recodified Interstate Commerce Act[1] and include the following: 49 U.S.C. Sections 10733, 10741, 10761 and 10762. The provisions of 49 U.S.C. Sections 10710, 10721, and 10731 are indirectly related to this action. The complete text of these statutes is set forth at Appendix C, *infra*, pages 1c to 14c. Pertinent portions of 49 U.S.C. Sections 10761(a), 10762(a)(1), 10741(b) and 10733 are contained herein.

49 U.S.C. Section 10761(a)(1) states as follows:

> "Except as provided in this subtitle, a carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title shall provide that transportation or service only if the rate for transportation or service is contained in a tariff that is in effect under this subchapter. That carrier may not charge or receive a different compensation for that transportation or service than the rate specified in the tariff whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device."

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[1] In 1978 The Interstate Commerce Act was revised and recodified "... without substantive change". See Pub.L. 95-473, 92 Stat. 1337, as 49 U.S.C. Sections 10101, et seq. (1988 Special Pamphlet at pages III through IV).

Pertinent portions of 49 U.S.C. Section 10762(a)(1) state:

"A motor common carrier shall publish and file with the Commission tariffs containing the rates for transportation it may provide under this subtitle."

49 U.S.C. Section 10741(b) provides as follows:

"A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title may not subject a person, place, port or type of traffic to unreasonable discrimination."

The provisions of 49 U.S.C. Section 10733(a)[2] are as follows:

"A motor common carrier of property providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title may provide transportation of recyclable materials without charge or at a reduced rate."

STATEMENT OF THE CASE

Petitioner WCTL was a motor common carrier holding operating authorities from the Interstate Commerce Commission authorizing it to engage in for-hire transportation in interstate or foreign commerce.[3] From September 6, 1983 to December 18, 1984 it transported 24 shipments of

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[2]This statute was added to the Interstate Commerce Act as part of the Motor Carrier Act of 1980. Pub.L. 96-296, Section 32(a), July 1, 1980, 94 Stat. 824.

[3]WCTL operated under certificates issued pursuant to 49 U.S.C. Section 10922 and permits issued pursuant to 49 U.S.C. Section 10923.

recyclable scrap paper on behalf of ACRC in interstate commerce from Arcata, California to points in Oregon and charged less than the applicable tariff rate for those services.

West Coast filed suit in the United States District Court for the Northern District of California on August 25, 1986 seeking to collect the difference between the charges which were billed and collected and the published tariff rates on file with the Interstate Commerce Commission totalling $2,534.07.[4]

The parties filed cross-motions for summary judgment. The defendant's motion was granted. See, Order Granting Defendant's Motion for Summary Judgment, Appendix B, *infra,* pages 19a to 20a. There, the district court held that publication of motor carrier rates for the transportation of recyclable materials was unnecessary since the provisions of 49 U.S.C. Section 10733 allow motor carriers to provide such transportation without charge or at a reduced rate and thus sanction discriminatory treatment in favor of recyclable materials. Accordingly, WCTL was not permitted to recover the difference between the rate quoted and charged ACRC.

The action was appealed to the Ninth Circuit Court of Appeals which affirmed the district court, holding that the rates for the transportation of recyclable materials need not be published in a motor carrier's tariff pursuant to Section 10733 of the Intersate Commerce Act.

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[4]The Supreme Court has stated that carriers have "not only the right but also the duty to recover [their] proper charges for services performed". *Southern Pac. Transp. Co. v. Commercial Metals Co.,* 456 U.S. 336, 343 (1982). 49 U.S.C. Section 11706(a) requires a carrier to begin such an action within three (3) years after the claim accrues.

ARGUMENT

I

THIS IS A CASE OF FIRST IMPRESSION AND INVOLVES IMPORTANT QUESTION OF FEDERAL LAW WHICH SHOULD BE SETTLED BY THIS COURT.

In the Ninth Circuit's opinion, it is recognized that this is a case of first impression concerning the meaning of Section 10733 of the Interstate Commerce Act. Opinion of the Ninth Circuit Court of Appeals, 846 F.2d 1239, 1242 Appendix A, *infra,* at page 3a. It is submitted that it is an important question of federal law which should be settled by this Court.

II

THE RULING CONFLICTS WITH A PRIOR DECISION OF THE SUPREME COURT.

In its opinion, the Ninth Circuit relied substantially on the common language shared by 49 U.S.C. Sections 10721 and 10733 to support its conclusion that publication and filing of motor carrier rates for the transportation of recyclable materials is unnecessary. Section 10721(b)(1) and (2) provide in pertinent part as follows:

> "(b)(1) A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title . . . may transport property for the United States Government, a State, or municipal government *without charge or at reduced rates*; except that any rates for the transportation of household goods for the United States government shall not be predatory.

> "(b)(2) Unless a carrier is advised by the United States Government that disclosure of a quotation or tender of a rate established under paragraph (1) of this subsection for transportation provided to the United States Government would endanger the national security, the carrier *shall file the quoted or tendered rate, including a retroactive rate made after the transportation has been provided, concurrently, with the Commission* and the department, agency, or instrumentality of the United States government for which the quotation or tender was made or for which the proposed transportation is to be provided." (emphasis added)

In construing this language in connection with 49 U.S.C. Section 22, the predecessor of 49 U.S.C. Section 10721[5], the United States Supreme Court stated in *Nashville, C. & St. L. Ry. v. State of Tennessee*, 262 U.S. 318 (1923) at page 323 as follows:

> "Section 22 must in this matter, as in others, be read in connection with the rest of the act, and be interpreted with due regard to its manifest purpose. (Citations and footnote omitted.) Congress did not intend, by this provision concerning reduced rates and free transportation, to create an instrument, by which the carrier was authorized, in its discretion, to subject interstate commerce to undue prejudice, or by which the state was empowered to compel the carriers so to do. The object of the section was to settle, beyond doubt, that the preferential treatment of certain classes of shippers and travelers, in the

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[5]49 U.S.C. Section 22 was re-enacted as 49 U.S.C. Section 10721 as part of the recodification of the Interstate Commerce Act. See footnote 1, *supra*.

> matters therein recited is not necessarily prohibited. And in this respect its provisions are illustrative, not exclusive. It limits, or defines, the requirement of equality in treatment which is imposed in other sections of the act. By so doing, it preserves the right of the carrier theretofore enjoyed of granting, in its discretion, preferential treatment to particular classes in certain cases. Only in this sense can it be said that the section is permissive. It confers no right upon any shipper or traveller. Nor does it confer any new right upon the carrier."

The Supreme Court thus held that the ICC had jurisdiction under 49 U.S.C. Section 22 to prohibit reduced rates where they resulted in unjust discrimination or in undue prejudice to interstate commerce and thus rejected the argument of the State of Tennessee that the ICC lacked authority to order an increase in intrastate rates to the level of interstate rates for traffic transported on its behalf.

The import of the Supreme Court's decision and its applicability here is quite clear. The ICC has jurisdiction over rates involving the transportation of property for the United States Government, a state, or municipal government, even though a carrier may engage in such transportation without charge or at reduced rates. This transportation is subject to the prohibition contained in 49 U.S.C. Section 10741(b) that a common carrier may not subject a person, place, port or type of traffic to unreasonable discrimination.

The common language of Sections 10721 and 10733 must be similarly construed. The Supreme Court's decision in *Nashville, etc. v. State of Tennessee, supra,* therefore compels the conclusion that Section 10733, like its Section 10721 counterpart, allows carriers to transport re-

cyclable materials at rates lower than the rates for non-recyclable materials, but nevertheless requires that a motor carrier publish its rates in a tariff in order to permit the ICC to exercise its regulatory jurisdiction and prevent the subjection of a person, place, port, or type of traffic to unreasonable discrimination as provided in Section 10741.

The legislative history of Section 10733 supports this interpretation. H.R. Rep. No. 6418, 96th Cong., 2nd Sess. (1980), added Section 32 to the Motor Carrier Act of 1980, and indicated the following:

> "This section allows motor carriers of property to perform transportation services for recyclable materials without charge or at reduced rates. 'Recyclable materials' means waste materials for recycling or reuse in furtherance of recognized pollution control programs. *This section is meant to be permissive for motor carriers. It allows them to transport recyclable materials without charge or at reduced rates* to the extent that the service is provided to further recognized pollution control programs." (Emphasis added.)

In its opinion, the Ninth Circuit recognized that "... Section 10733 is susceptible to two conflicting interpretations." It observed as follows at 846 F.2d 1239, 1241, Appendix A, *infra*, at pages 6a-7a:

> "On the one hand, Section 10733 may be read as allowing motor carriers to ship recyclable materials at rates lower than the carrier's tariff rates. Under this interpretation, carriers do not have to file, in their tariffs, rates for the transporation of recyclable materials. The Arcata Recycling Center asserts that this is the correct interpretation of Section 10733.

> "On the other hand, Section 10733 could be read as allowing carriers to ship recyclable materials at rates lower than the rates for non-recyclable materials. For example, Section 10733 could mean that carrier may charge less to ship recyclable bottles than to ship non-recyclable bottles. Under this interpretation, carriers still have to file, in their tariffs, rates for recyclable materials. West Coast contends that this is the correct interpretation of Section 10733."

The interpretation urged by petitioner, West Coast, is correct and is supported by this Court's construction of former Section 22 in *Nashville, etc. Ry. v. State of Tennessee, supra,* and the legislative history of Section 10733. It simply recognizes that a motor carrier may engage in the transportation of recyclable materials at reduced rates or without charge thus sanctioning preferential treatment for this particular class of shippers which might otherwise violate the anti-discrimination provisions of Section 10741. However, as with rates under Section 10721 for the transportation of government traffic, the rates for the transportation of recyclables must be published in a motor carrier's tariff and filed with the ICC which thereby retains its regulatory jurisdiction.

III

THE NINTH CIRCUIT'S STATUTORY CONSTRUCTION INCORRECTLY CREATES AN IMPLIED EXEMPTION FROM A COMPREHENSIVE REGULATORY STATUTE.

The Ninth Circuit's opinion incorrectly creates an implied statutory exemption resulting in the deregulation of the interstate motor carrier transportation of recyclable

commodities freeing it from rate regulation by the ICC.[6] Such implied exemptions are disfavored. See for example, *Andrus v. Glover Construction Co.,* 446 U.S. 608, 616 (1980).

In its opinion, the Ninth Circuit undertook an extensive discussion and analysis of Subchapter II entitled "Special Circumstances," 49 U.S.C. Sections 10721-10735 which is part of the larger subtitle, Subtitle IV — Interstate Commerce, 49 U.S.C. Sections 10101-11917. This analysis sought to establish that the placement of Section 10733 within Subchapter II, together with Sections 10721, 10730 and 10735 supported the conclusion that Section 10733 did not require, or otherwise excepted, motor carrier rates for the transportation of recyclable materials from publication and ICC tariff filing.

A substantial portion of the opinion mistakenly relied on an analogous portion of Section 10721 relating to transportation of property for the United States Government, a State or municipal government without charge or at reduced rates, but failed to recognize another portion of the statute which required filing of the rates with the ICC. While sections 10721 and 10733 share some common language, section 10721(b)(2) clearly requires the filing of such rates with the ICC.[7] Accordingly, the placement of

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[6]See, *Federal Power Commission v. Texaco, Inc.,* 417 U.S. 380 (1974) (certiorari granted to review a judgment of the D.C. circuit that set aside an administrative order on the ground that the order amounted to a deregulation of small producers of natural gas and was unauthorized by the Natural Gas Act).

[7]*Jetco Inc. v. United States,* 11 Cl.Ct. 837 (1987), while stating at page 845 that the government and a common carrier do not have to abide the carrier's published rates, clearly implies that a carrier is required to publish and file its rates with the ICC. Accordingly, while a motor carrier may contract to ship government property and charge

Section 10733 in the same subchapter with Section 10721 does not support the Ninth Circuit's statutory construction analysis.

This is further illustrated at 846 F.2d 1239, 1244, Appendix A, *infra,* at page 13a where the Ninth Circuit's opinion restated the following general principle of statutory construction:

> "When some statutory provisions expressly mention a requirement, the omission of that requirement from other statutory provisions implies that Congress intended both the inclusion of the requirement *and* the exclusion of the requirement."

According to the Ninth Circuit, under this principle, Congress intentionally reiterated the general tariff rate filing requirements in Sections 10730 and 10735 and intentionally omitted any mention of those requirements from Sections 10721 and 10733. It thus stated at 846 F.2d 1239, 1244, Appendix A, *infra,* at pages 13a-14a, as follows:

> "The lack of any mention of the general tariff rate filing requirements in Section 10721 has already been interpreted to mean that a motor carrier may charge reduced rates for the transportation of government property without filing those rates in its carrier's tariff . . . Section 10733 should similarly be interpreted to allow a motor carrier to charge reduced rates for the transportation of recyclable materials without filing those rates in its carrier's tariff."

However, as previously noted, Section 10721(b)(2) expressly requires the publication of the carrier's rates for

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reduced rates, lower than those in its tariff, rates must still be contained in the carrier's tariff and filed with the ICC.

the transportation of government traffic in its tariff which must be filed with the ICC. Accordingly, the omission of any mention of the general tariff rate filing requirement in Section 10733 cannot be conclusively established by analogy to Section 10721.

Furthermore, examination of Sections 10721-10735 comprising Subchapter II entitled "Special Circumstances", illustrates the absence of any pattern of language which would support the Ninth Circuit's theory of statutory construction. Indeed, 49 U.S.C. Section 10731 requires the ICC to investigate the rate structure for the transportation of recyclable or recycled materials and competing virgin materials by rail carriers providing transportation subject to the jurisdiction of the Commission under Subchapter I of Chapter 105 of Title 49 and the manner in which that rate structure has been affected by successive general rate increases.[8] This statute demonstrates that Congress specifically intended to have the ICC closely monitor rail rates and practices for transportation of recyclables thus reserving rather than eliminating rate regulation in this area. Its presence suggests that Congress also intended that the ICC continue to retain jurisdiction over motor carrier rates and practices for the transportation of recyclable commodities. Petitioner thus asserts that the exemption from tariff filing created by the Ninth Circuit's ruling is not supported by this means of statutory construction.

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[8]Under 49 U.S.C. Section 10710, the Interstate Commerce Commission is required to maintain regulations which eliminate discrimination against the transportation of recyclable materials in rate structures and in other Commission practices where discrimination exists.

IV

THERE IS A POTENTIAL CONFLICT AMONG CIRCUIT COURTS OF APPEAL THAT CAN BE AVOIDED.

There are nine (9) cases now pending before the United States District Courts located in both the Ninth and Tenth Circuits which involve the same issues. Those cases are identified in Appendix D, *infra,* at pages 1-2d. A number of those cases have been stayed pending a determination on this Petition for a Writ of Certiorari. Obviously, a resolution by this Court at this time, would preclude any division of opinion or conflict among the various circuit courts which might otherwise occur, were such actions to be appealed and result in decisions by those circuits.

V

CONCLUSION

For the foregoing reasons, petitioner prays that the Writ be issued so that the judgment below may be reversed.

Dated: August 2, 1988

Respectfully submitted,

MILES L. KAVALLER
Attorney for Petitioner
West Coast Truck Lines, Inc.

APPENDIX A

No. 87-1868

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WEST COAST TRUCK LINES, INC., an Oregon corporation,
Plaintiff-Appellant,

v.

ARCATA COMMUNITY RECYCLING CENTER, INC., a California corporation,
Defendant-Appellee.

D.C. No. CV-86-4915-JPV

OPINION

Appeal from the United States District Court
for the Northern District of California
John P. Vukasin, Jr., District Judge, Presiding

Argued and Submitted
November 10, 1987 — San Francisco, California

Filed May 23, 1988

Before: Mary M. Schroeder, Harry Pregerson and Melvin Brunetti, Circuit Judges.

Opinion by Judge Pregerson

SUMMARY

Motor Carriers/Statutes

Appeal from summary judgment holding that Arcata Recycling Center was entitled to rely on West Coast's negotiated transportation rates for transporting recyclable material. The court affirmed holding that 49 U.S.C. § 10733 permits motor carriers to charge reduced rates for recyclable materials' transportation without filing those rates in carrier's tariff.

Appellant West Coast is a motor carrier that transported shipments of recyclable paper for appellee Arcata Recycling Center. Despite the existence of an applicable tariff rate, West Coast offered and agreed to charge the Center reduced rates for the shipments. Later, West Coast brought suit to collect the difference between its scrap paper tariff rate and the contract rates actually charged for the shipments. West Coast argued that it had a legal duty to charge the Center the scrap paper tariff rate because failure to collect the full amount would violate the Interstate Commerce Act. The Center moved for and received summary judgment. The district court found that rates for the transportation of recyclable materials need not be published in a motor carrier's tariff pursuant to section 10733. The court therefore found that the Center was entitled to rely on West Coast's negotiated rates.

[1] Section 10761 prohibits a motor common carrier from transporting freight at rates other than its filed tariff rates. [2] Section 10721 allows common carriers to transport property for the federal government, a state, or municipal government *without charge or at reduced rates.* Thus, pursuant to section 10721, when a motor carrier

contracts to ship government property, it may agree to charge reduced rates without filing those rates in its carrier's tariff. [3] Section 10733 states that carriers may provide transportation of recyclable materials *without charge or a reduced rate.* [4] The placement of section 10733 alongside section 10721 in subchapter II, and the use of almost identical language in the two sections, supports the argument that congress intended section 10733, like section 10721, to function as an exception to the general tariff rate filing requirements. [5] The legislative history of section 10733 confirms this interpretation.

COUNSEL

Miles L. Kavaller, Beverly Hills, California, for the plaintiff-appellant.

Steven Gompertz, Arcata, California, for the defendant-appellee.

OPINION

PREGERSON, Circuit Judge:

The district court granted summary judgment for appellee Arcata Community Recycling Center, Inc. (the Arcata Recycling Center). The court held that rates for the transportation of recyclable materials need not be published in a motor carrier's tariff pursuant to section 10733 of the Interstate Commerce Act. 49 U.S.C. § 10733 (1982). West Coast Truck Lines, Inc. (West Coast) appeals, contending that the district court misconstrued section 10733. We affirm.

I

BACKGROUND

A. *Statutory Background*

The Interstate Commerce Act, 49 U.S.C. §§ 10101-11917 (1982 & Supp. III 1985), places several limitations on motor common carriers[1] to ensure that they do not favor some customers and discriminate against others. First, carriers are required to file their transportation rates with the Interstate Commerce Commission (ICC) in the form of a tariff.[2] 49 U.S.C. § 10762(a)(1) (1982). Second, carriers are prohibited from transporting materials at rates other than their tariff rates. *Id.* § 10761(a). Third, carriers are commanded to treat like customers alike. *See id.* § 10741 (carriers discriminate when they provide similar services for different compensation).

To promote compliance with the above provisions of the Interstate Commerce Act, the Supreme Court has stated that carriers have "not only the right but also the duty to recover [their] proper charges for services performed." *Southern Pac. Transp. Co. v. Commercial Metals Co.*, 456 U.S. 336, 343 (1982). In practical terms, this means that carriers may not enter into contracts to charge less than their tariff rates. *See Farley Transp. Co. v. Santa Fe Trail Transp. Co.*, 778 F.2d 1365, 1372 (9th Cir. 1985); *Louisville & Nashville R.R. Co. v. Mead Johnson & Co.*, 737 F.2d

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[1]A "motor common carrier" is "a person holding itself out to the general public to provide motor vehicle transportation for compensation over regular or irregular routes, or both." 49 U.S.C. § 10102(14) (1982).

[2]A "tariff" is the document "[a] motor common carrier shall publish and file with the Commission . . . containing the rates for transportation it may provide under this subtitle." § 10762(a)(1).

683, 689 (7th Cir.), *cert. denied*, 469 U.S. 982 (1984) (no act or omission by a carrier can prevent the enforcement of the tariff rate). If a carrier does enter into a contract to charge a shipper less than the applicable tariff rate, the carrier may later sue the shipper to recover the amount "undercharged." *Sea-Land Service, Inc. v. Murrey & Son's Co.*, 824 F.2d 740, 742 (9th Cir. 1987). In an undercharge collection suit, the shipper generally cannot invoke the contract principle of estoppel as a defense against the carrier. *United States v. Western Pac. R.R. Co.*, 352 U.S. 59, 76 n.20 (1956) (interpreting an earlier version of the Interstate Commerce Act); *see Sea-Land Service, Inc.*, 824 F.2d at 742 ("a carrier can sue to recover charges listed in the tariff *regardless of an agreement to accept a lesser rate*") (emphasis added).[3]

The rule that tariff rates must be strictly enforced is a general rule. There are exceptions. For example, carriers

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[3]Recently, the ICC adopted a new policy stating that it will consider equitable defenses to undercharge claims in some cases. *National Industrial Transportation League — Petition to Institute Rulemaking on Negotiated Motor Common Carrier Rates; Ex Parte No. MC-177*, 1986 Fed. Carr. Cas. (CCH) 47,348 (Oct. 14, 1986). The ICC recommends that courts refer certain cases to the agency under the doctrine of primary jurisdiction. In those cases, the ICC (not the court) will determine whether the collection of undercharges would constitute an "unreasonable practice" under the Interstate Commerce Act. *Id.* at 47,352-53; *see* 49 U.S.C. §§ 10701, 10704 (1982) (setting forth the ICC's authority to declare a practice unreasonable).

West Coast challenges the validity of the ICC's new policy. We need not decide whether the ICC's policy accords with its statutory authority. Because we hold that a motor carrier may charge reduced rates for the transportation of recyclable materials without filing those rates in its tariff, motor carriers no longer have reason to bring undercharge collection claims against shippers of recyclable materials.

do not have to charge their tariff rates when they contract to transport materials for government shippers — whether municipal, state, or federal. 49 U.S.C. § 10721 (1982); *see United States v. Western Pac. R.R. Co.*, 352 U.S. at 76 & n.20 (carriers may agree to charge the government reduced rates, and the government may estop carriers from charging tariff rates when there is a contrary agreement). The Arcata Recycling Center argues that section 10733 of the Interstate Commerce Act presents another exception to the rule that carriers may charge only their tariff rates.

Section 10733 was added to the Interstate Commerce Act in 1980 as part of a congressional program to deregulate the trucking industry. Motor Carrier Act of 1980, Pub. L. No. 96-296, § 32, 94 Stat. 793, 824 (codified at 49 U.S.C. § 10733); *see* H.R. Rep. No. 1069, 96th Cong., 2d Sess. 1-3, *reprinted in* 1980 U.S. Code Cong. & Admin. News 2283, 2283-5. Section 10733 states that "[a] motor carrier . . . may provide transportation of recyclable materials without charge or at a reduced rate." 49 U.S.C. § 10733.

On its face, and out of context, section 10733 is susceptible to two conflicting interpretations. On the one hand, section 10733 may be read as allowing motor carriers to ship recyclable materials at rates lower than the carrier's tariff rates. Under this interpretation, carriers do not have to file, in their tariffs, rates for the transportation of recyclable materials. The Arcata Recycling Center asserts that this is the correct interpretation of section 10733.

On the other hand, section 10733 could be read as allowing carriers to ship recyclable materials at rates lower than the rates for non-recyclable materials. For example, section 10733 could mean that carriers may charge less to ship recyclable bottles than to ship non-

recyclable bottles. Under this interpretation, carriers still have to file, in their tariffs, rates for recyclable materials. West Coast contends that this is the correct interpretation of section 10733.

This case requires that we determine which of the two suggested interpretations of section 10733 accurately reflects congressional intent.

B. *Facts*

West Coast is a motor common carrier. From September 6, 1983 to December 18, 1984, West Coast transported twenty-four shipments of recyclable paper scrap or waste for the Arcata Recycling Center. At that time, West Coast's tariff on file with the ICC contained rates for the transportation of scrap paper. Despite the existence of an applicable tariff rate, West Coast offered and agreed to charge the Arcata Recycling Center reduced rates for the twenty-four shipments. The total difference between West Coast's scrap paper tariff rate and the contract rates actually charged for the twenty-four shipments was $2,534.07.

Three years after completing the Arcata Recycling Center's shipments, West Coast brought suit in district court to collect the $2,534.07 it "undercharged" the Arcata Recycling Center. West Coast argued that it had a legal duty to charge the Arcata Recycling Center the scrap paper tariff rate, rather than the contract rate, for the twenty-four shipments. Failure to collect the full amount of the tariff rate, West Coast contended, would violate the Interstate Commerce Act.

The Arcata Recycling Center moved for summary judgment. It argued that section 10733 of the Interstate Commerce Act allows motor carriers to charge reduced rates for the transportation of recyclable materials with-

out ever filing the reduced rates in the carrier's tariff. Consequently, the Arcata Recycling Center asserted that it was entitled to rely on the transportation rates West Coast actually negotiated, charged, and collected.

The district court found that rates for the transportation of recyclable materials need not be published in a motor carrier's tariff pursuant to section 10733. The court therefore found that the Arcata Recycling Center was entitled to rely on West Coast's negotiated rates. Accordingly, the district court granted the Arcata Recycling Center's motion for summary judgment. We affirm.

II

STANDARD OF REVIEW

Interpretation of a statute involves a question of law subject to de novo review. *Trustees of Amalgamated Ins. Fund v. Geltman Indus., Inc.*, 784 F.2d 926, 929 (9th Cir.), *cert. denied*, 107 S. Ct. 90 (1986).

III

DISCUSSION

This is a case of first impression concerning the meaning of section 10733 of the Interstate Commerce Act. Section 10733 is entitled "Rates for transportation of recyclable materials." It reads in full:

> (a) A motor carrier of property providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title may provide transportation of recyclable materials without charge or at a reduced rate.

> (b) In this section, "recyclable materials" means waste products for recycling or reuse in the furtherance of recognized pollution control programs.

49 U.S.C. § 10733 (1982). We must decide whether section 10733 permits a motor carrier to charge reduced rates for the transportation of recyclable materials without filing those rates in the carrier's tariff.

In construing statutes, our goal is to "ascertain the intent of Congress and to give effect to legislative will." *Turner v. McMahon,* 830 F.2d 1003, 1007 (9th Cir. 1987) (citation omitted). Congressional intent "may be ascertained from the plain language of the statute, or it may be necessary to look to the legislative history for guidance." *In re Cecchini,* 780 F.2d 1440, 1442 (9th Cir. 1986). In interpreting the plain language of a particular statutory provision, we examine the statutory scheme as a whole. *Moorhead v. United States,* 774 F.2d 936, 941 (9th Cir. 1985). As indicated above, the plain language of section 10733 when read in isolation does not answer the question whether Congress intended to allow a motor carrier to reduce its rates for the transportation of recyclable materials without filing the reduced rates in its carrier's tariff. When section 10733 is read in the context of the statutory scheme as a whole, however, it appears that Congress did intend section 10733 to act as an exception to the general rule that a carrier may charge only its filed tariff rates for the transportation of materials.

[1] The general tariff rate filing requirements of the interstate Commerce Act are contained in subchapter IV of the Act, entitled "Tariffs and Traffic." 49 U.S.C. §§ 10761-10766 (1982). Section 10762 sets forth "General tariff requirements." § 10762. "A motor common carrier shall publish and file with the Commission tariffs containing the rates for transportation it may provide under this

subtitle." § 10762(a)(1). Section 10761 then prohibits a motor common carrier from transporting freight at rates other than its filed tariff rates. § 10761(a).

In section 10761, Congress specifically notes that exceptions may be established to the rule that a carrier must charge only its filed tariff rates. Section 10761 states that "*[e]xcept as provided in this subtitle*, a carrier providing transportation . . . shall provide that service only if the rate for the transportation . . . is contained in a tariff . . . ." *Id.* (emphasis added).

Subchapter II entitled "Special Circumstances," 49 U.S.C. §§ 10721-10735 (1982), is part of the larger *subtitle* within which exceptions may be established. Subtitle IV — Interstate Commerce, 49 U.S.C. §§ 10101-11917 (1982 & Supp. III 1985). Although titles cannot expand the meaning of a statute, they may be helpful in interpreting ambiguities within the context of a statute. *Russ v. Wilkins*, 624 F.2d 914, 922 (9th Cir. 1980), *cert. denied*, 451 U.S. 908 (1981). The title "Special Circumstances" implies that Congress considered the provisions of subchapter II "special" and therefore not necessarily governed by the general rules stated elsewhere in the Act. Thus, the title "Special Circumstances" indicates that subchapter II would be a reasonable place for Congress to codify exceptions to the general tariff rate filing requirements.

[2] Courts have acknowledged that Congress has, in fact, placed at least one exception to the general tariff rate filing requirements in subchapter II. Section 10721 allows common carriers to "transport property for the United States Government, a State, or municipal government *without charge or at reduced rates.*" 49 U.S.C. § 10721(b)(1) (emphasis added). Section 10721 has been interpreted to allow carriers and government shippers to

negotiate and enforce rates lower than the carrier's tariff rates. *See United States v. Western Pac. R.R. Co.*, 352 U.S. 59, 76 (1956) (interpreting an earlier section of the Act, which was later amended and recodified as section 10721); *Jetco, Inc. v. United States*, 11 Cl. Ct. 837, 845, (1987) ("When conducting shipping business with the government a common carrier does not have to abide by its published (tariff) rates."). Thus, pursuant to section 10721, when a motor carrier contracts to ship government property, it may agree to charge reduced rates without filing those rates in its carrier's tariff.

[3] When Congress enacted section 10733 regarding the transportation of recyclable materials, the section at issue in this case, it chose to codify section 10733 alongside section 10721 in subchapter II. Motor Carrier Act of 1980, Pub. L. No. 96-296, § 32(a), 94 Stat. 793, 824. By so doing, Congress labeled the transportation of recyclable materials another "special circumstance." In drafting section 10733, Congress chose to track the language of section 10721, an acknowledged exception to the general tariff rate filing requirements. Section 10733 states that carriers may "provide transportation of recyclable materials *without charge or at a reduced rate*." 49 U.S.C. § 10733(a) (emphasis added).

[4] The placement of section 10733 alongside section 10721 in subchapter II, and the use of almost identical language in the two sections, supports the argument that Congress intended section 10733, like section 10721, to function as an exception to the general tariff rate filing requirements. Under this interpretation, a motor carrier would be allowed to charge reduced rates for the transportation of recyclable materials without filing those rates in its carrier's tariff. The argument for this interpretation becomes even stronger when sections 10721 and 10733 are

compared with two other provisions in subchapter II that were enacted during the same year as section 10733.

Section 10733 was enacted in 1980. Motor Carrier Act of 1980, Pub. L. No. 96-296 § 32(a), 94 Stat. 793, 824. Section 10733 (like section 10721) authorizes carriers to charge "reduced rates" without mentioning the general tariff rate filing requirements. 49 U.S.C. § 10733. In contrast, two other sections enacted in 1980 authorize reduced or privately negotiated rates, but explicitly subject those rates to the general tariff rate filing requirements. *See* 49 U.S.C. §§ 10730(b), 10735.

Section 10730(b), regarding rates and liability, was enacted along with section 10733 as part of the Motor Carrier Act of 1980. Pub. L. No. 96-296, § 12, 94 Stat. 793, 802. Section 10730(b) authorizes carriers to establish reduced rates that limit carrier liability for property damaged in transport. 49 U.S.C. § 10730(b). These rates may reflect negotiated agreements between carriers and shippers. *Id.* Thus, like sections 10721 (government property) and 10733 (recyclable materials), section 10730(b) gives carriers greater rate flexibility. *See* H.R. Rep. No. 1069, 96th Cong., 2d Sess. 4, 25-26, *reprinted in* 1980 U.S. Code Cong. & Admin. News 2283, 2307-08. Unlike sections 10721 or 10733, however, section 10730(b) explicitly states that the more flexible rates it allows are "subject to the provisions of this chapter (*including, with respect to a motor carrier, the general tariff requirements of section 10762 of this title).*" 49 U.S.C. § 10730(b) (emphasis added).

Section 10735, regarding the transportation of household goods, was enacted only three months after section 10733. Household Goods Transportation Act of 1980, Pub. L. No. 96-454, § 4(a), 94 Stat. 2011, 2012 (enacted as § 10734, and later renumbered § 10735 by Pub. L. No.

98-554, Title II, § 227(b)(1), 98 Stat. 2829, 2852 (1984)). Like section 10730(b) regarding rates and liability, section 10735 allows greater rate flexibility, yet reiterates the applicability of the general tariff rate filing requirements to the more flexible rates. Section 10735 allows carriers to charge rates based on a "written, binding estimate of charges for providing transportation." 49 U.S.C. § 10735(a). It also allows carriers to establish rates that include a penalty provision for later pick up or delivery of the household goods. Nonetheless, section 10735 states that these rates will be "subject to the provisions of this chapter (*including, the general tariff requirements of section 10762 of this title*)." *Id.* (emphasis added).

When some statutory provisions expressly mention a requirement, the omission of that requirement from other statutory provisions implies that Congress intended both the inclusion of the requirement *and* the exclusion of the requirement. *See e.g., Arizona Elec. Power Co-op v. United States,* 816 F.2d 1366, 1375 (9th Cir. 1987) (inclusion of a test in some sections of the Interstate Commerce Act implied the exclusion of that test from another section of the Act). Under this principle of statutory construction, Congress intentionally reiterated the general tariff rate filing requirements in section 10730 (rates and liabilities) and 10735 (household goods) and intentionally omitted any mention of those requirements from sections 10721 (government property) and 10733 (recyclable materials). The lack of any mention of the general tariff rate filing requirements in section 10721 has already been interpreted to mean that a motor carrier may charge reduced rates for the transportation of government property without filing those rates in its carrier's tariff. *See United States v. Western Pac. R.R. Co.,* 352 U.S. 59, 76 (1956) (interpreting an earlier section of the Act, which was

later amended and recodified as section 10721); *Jetco,* 11 Cl. Ct. at 845 ("When conducting shipping business with the government a common carrier does not have to abide by its pubished (tariff) rates."). Section 10733 should similarly be interpreted to allow motor carrier to charge reduced rates for the transportation of recyclable materials without filing those rates in its carrier's tariff.

Thus, the overall statutory scheme reveals the unambiguous intent of Congress that section 10733 should function as an exception to the general tariff rate filing requirements of the Interstate Commerce Act. In summary, the placement of section 10733 in the "Special Circumstances" subchapter (subchapter II) of the Act indicates that Congress did not necessarily want to subject the transportation of recyclable materials to the generally applicable rules of the Act. The explicit reiteration of the general tariff rate filing requirements in some sections of the "Special Circumstances" subchapter implies that Congress meant to subject *those* sections of the subchapter to the tariff rate filing requirements. The omission of any mention of the tariff rate filing requirements from sections 10721 and 10733 of subchapter II reveals that Congress intended to exempt those sections from the general tariff rate filing requirements. Courts have already construed section 10721 as allowing carriers to transport government property at reduced rates without filing those rates in their carrier's tariff. Accordingly, we hold that section 10733 exempts motor carriers from the general tariff rate filing requirements of section 10761 and 10762 of the Interstate Commerce Act when they contract to transport recyclable materials pursuant to section 10733. Therefore, a motor carrier may charge reduced rates for the transportation of recyclable materials without filing those rates in its carrier's tariff.

[5] The legislative history of section 10733 confirms our interpretation of that section. When looking to the legislative history for guidance in statutory interpretation, we consider the "time and circumstances surrounding the enactment as well as the object to be accomplished by it." *Callejas v. McMahon,* 750 F.2d 729, 731 (9th Cir. 1984).

Section 10733 was passed during an era of deregulation. The Motor Carrier Act of 1980, which enacted section 10733, reflected congressional sentiment that it was time to change the character of regulations governing the trucking industry. Pub.L. No. 96-296, 94 Stat. 793 (codified as amended in scattered sections of 49 U.S.C.). After using the Interstate Commerce Act to regulate the trucking industry for forty-five years with little or no amendment, Congress recognized that it was time to "overhaul outmoded and archaic regulatory mechanisms." H.R. Rep. No. 1069, 96th Cong., 2d Sess. 2, *reprinted in* 1980 U.S. Code Cong. & Admin. News 2284.

In 1980, Congress expressed objectives that were different from those expressed in earlier eras. The longstanding objective behind the tariff rate filing requirements of sections 10761 and 10762, and their strict enforcement by the courts, had been to "eliminate [from the transportation industry] the discrimination and favoritism that had plagued the railroad industry in the late 19th century". *Southern Pac. Transp. Co. v. Commercial Metals Co.,* 456 U.S. 336, 344 (1982). In 1980, however, Congress focused on the objectives of "increasing competition and reducing unnecessary federal regulations." H.R. Rep. No. 1069, 96th Cong., 2d Sess. 3, *reprinted in* 1980 U.S. Code Cong. & Admin. News 2285. One of the means chosen to accomplish the 1980 objectives was price flexibility. *Id.*

The legislative history of section 10733 clearly indicates that Congress was more concerned about the need for price flexibility to promote the recycling industry than about the possibility that motor carriers might discriminate among shippers of recyclable materials. Congress explicitly stated that "*[t]his section is meant to be permissive for motor carriers.*" H.R. Rep. No. 1069, 96th Cong., 2d Sess. 45, *reprinted in* 1980 U.S. Code Cong. & Admin. News 2327 (emphasis added). Thus, Congress not only omitted any mention of the tariff rate filing requirements from the text of section 10733, it also included an affirmative statement in the legislative history that section 10733 should operate as a permissive grant of authority to motor carriers.

Instead of subjecting rates for the transportation of recyclable materials to the general tariff rate filing requirements, Congress imposed a new requirement on those rates. Section 10733 allows motor carriers to "transport recyclable materials without charge or at reduced rates *to the extent that the service is provided to further recognized pollution control programs.*" *Id.* (emphasis added).

In the field of recycling, it is reasonable for Congress to find that the need for price flexibility outweighs concerns regarding discrimination or favoritism. The recycling industry is still young and may need price flexibility to encourage its development. Furthermore, many recycling centers, such as the Arcata Recycling Center, are nonprofit organizations that do not compete with one another in the same manner as for-profit businesses. Finally, if discrimination among shippers of recyclable materials becomes a problem, Congress can always amend section 10733 to include statements such as those included in sections 10730(b) and 10735 of the Act — that the re-

duced rates permitted by section 10733 must also be subject to the general tariff requirements of section 10762.[4] *See* 49 U.S.C. §§ 10730(b), 10735.

IV

CONCLUSION

We hold that section 10733 exempts motor carriers from the general tariff rate filing requirements of section 10761 and 10762 of the Interstate Commerce Act. Therefore, a motor carrier may charge reduced rates for the transportation of recyclable materials pursuant to section 10733 without filing those rates in its carrier's tariff.

West Coast charged the Arcata Recycling Center reduced rates for the transportation of recyclable materials and did not file those rates in its carrier's tariff. The district court correctly held that this practice is permissible under section 10733 of the Act. The Interstate Commerce Act does not require West Coast to file an undercharge collection claim against the Arcata Re-

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[4]Moreover, the general tariff rate filing requirements of sections 10761 and 10762 are not the only statutory means of guarding against discrimination among shippers. We hold that section 10733 exempts motor carriers of recyclable materials from the tariff rate filing requirements of section 10761 and 10762 of the Interstate Commerce Act. Because discrimination is not an issue in this case, we express no opinion as to the relationship between section 10733 and section 10741 of the Act. Section 10741 generally prohibits discrimination by common carriers. 49 U.S.C. § 10741. Carriers discriminate when they charge one shipper different compensation from that charged another shipper for "performing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances." § 10741(a). Arguably, a motor carrier could be liable for a violation of section 10741 if that carrier discriminates among similarly situated shippers of recyclable materials.

cycling Center because West Coast did not have to charge its tariff rates for Arcata's twenty-four shipments.

Absent any legal requirement that West Coast bring an undercharge collection claim, West Coast is bound by the contract it made and executed with the Arcata Recycling Center. West Coast has failed to present any arguments as to why the normal contract principles of estoppel should not prevent West Coast from claiming that the Arcata Recycling Center owes additional money for its twenty-four shipments.[5] We therefore find that the district court properly granted summary judgment for the Arcata Recycling Center.

JUDGMENT AFFIRMED.

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[5]West Coast argues on appeal that evidence regarding an oral agreement to charge the reduced rates was inadmissible hearsay. This argument is without merit. Evidence of an oral agreement is not offered to prove the truth of the matter stated. Rather, such evidence is offered simply to show that the statement was made. It is well established that statements which may themselves affect the legal rights of the parties are not considered hearsay under the Federal Rules of Evidence. Fed. R. Evid. 801(c) advisory committee's note. Furthermore, West Coast billed and accepted payment from the Arcata Recycling Center at the reduced rates. Thus, evidence of the oral agreement was not the only evidence that West Coast agreed to charge reduced rates.

APPENDIX B

No. C 86-4915 JPV

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WEST COAST TRUCK LINES, INC.
Plaintiff,

v.

ARCATA COMMUNITY RECYCLING CENTER
Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

On February 5, 1982, this matter came before the court on plaintiff's and defendant's cross motions for summary judgement, or in the alternative for remand. The matter was deemed submitted on the written pleadings and no appearances of counsel were entered. Having fully considered the written pleadings the Court makes the following determinations.

The agreement between plaintiff and defendant for the shipping of defendant's recyclable materials falls within 49 USC section 10733. Section 10733 allows carriers such as plaintiff to provide transportation of recyclable materials without charges or at a reduced rate.

Ordinary interstate motor carriers are only allowed to charge the posted rates contained in a carriers filed tariff. 49 USC sections 10761 and 10762. In the event that a carrier charges more or less than the posted tariff, suit may be brought to recover the difference. The requirement of published tariffs is intended to prevent discriminatory treatment of shippers, such as the giving of secret rebates

to favored shippers. *Western Transportation Co. v. Wilson,* 682, F2d 1227 (1982).

By allowing lower rates for recyclable materials under section 10733 Congress has sanctioned discriminatory treatment in favor of recycled materials. It follows that any publication requirement is unnecessary for materials shipped under section 10733. Defendant was entitled to rely on the rate it was billed at. Collection of undercharges here would be an unreasonable practice where an unpublished rate was understood by the parties.

Accordingly, and good cause appearing, IT IS HEREBY ORDERED that defendant Arcata Community Recycling Center's motion for summary judgment is GRANTED and that plaintiff West Coast Truck Line, Inc.'s motion for summary judgment is DENIED. Plaintiff shall not be permitted to recover the difference between the rate quoted and charged defendant and its posted tariff rate.

Date: March 3, 1987

J.P. VUKASIN JR., JUDGE
UNITED STATES
DISTRICT COURT

No. C 86-4915 JPV

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WEST COAST TRUCK LINES, INC.
Plaintiff,

v.

ARCATA COMMUNITY RECYCLING CENTER
Defendant.

JUDGMENT

In accord with this court's order granting defendant's motion for summary judgement, and denying plaintiff's motion for summary judgement, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment in this matter be entered in favor of defendant and against plaintiff. IT IS FURTHER ORDERED that the above captioned matter is DISMISSED WITH PREJUDICE.

Date: March 3, 1987

J.P. VUKASIN, JR. JUDGE
UNITED STATES
DISTRICT COURT

APPENDIX C

§ 10710. Elimination of discrimination against recyclable materials

The Interstate Commerce Commission shall maintain regulations that will eliminate discrimination against the transportation of recylable materials in rate structures and in other Commission practices where discrimination exists.

(Pub.L. 95-473, Oct. 17, 1978, 92 Stat. 1383.)

SUBCHAPTER II — SPECIAL CIRCUMSTANCES

§ 10721. Government traffic

(a)(1) Except as provided in this section, the full applicable commercial rate shall be paid for transportation for the United States Government by a common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under this subtitle. Section 5 of title 41 does not apply when transportation for the United States Government can be obtained from a common carrier lawfully operating in the area where the transportation will be provided. When prescribing rates for transportation or service by those common carriers, the Commission shall consider increased revenues those carriers receive under this subsection to reflect those increases in appropriate readjustments of their rates.

(2) Paragraph (1) of this subsection does not apply, and the law related to compensation for transportation for the United States Government in effect immediately before September 18, 1940, applies to a rail carrier if that carrier, or its predecessor in interest, received a grant of

land from the United States to aid in constructing the railroad it operates but did not file a release with the Secretary of the Interior before September 18, 1941, of claims against the United States Government to, or arising out of, lands that were granted, claimed to have been granted, or claimed should have been granted to that carrier or its predecessor in interest. This paragraph does not require a rail carrier to reconvey to the United States land patented or certified to it or prevent the patent of land that the Secretary of the Interior found was sold by the carrier to an innocent purchaser for value or as preventing the patent of land listed or selected by the carrier and finally approved by the Secretary of the Interior to the extent that issuance of those patents is authorized by law.

(b)(1) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of chapter 105 of this title may transport individuals for the United States Government without charge or at reduced rates. The carriers may transport custom inspectors and immigration officers without charge. A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title shall provide transportation for the United States Postal Service under chapters 50 and 52 of title 39, and may transport property for the United States Government, a State, or municipal government without charge or at reduced rates; except that any rates for the transportation of household goods for the United States Government shall not be predatory.

(2) Unless a carrier is advised by the United States Government that disclosure of a quotation or tender of a rate established under paragraph (1) of this subsection for transportation provided to the United States Govern-

ment would endanger the national security, the carrier shall file the quoted or tendered rate, including a retroactive rate made after the transportation has been provided, concurrently, with the Commission and the department, agency, or instrumentality of the United States Government for which the quotation or tender was made or for which the proposed transportation is to be provided. A carrier may quote or tender a rate established under an agreement made and approved under section 10706 of this title, but the exemption from the antitrust laws provided by that section applies only when the filing requirements of this paragraph are met.

(2) Nothing in this subsection shall limit the Commission's authority to suspend and investigate proposed rates for the transportation of household goods for the United States Government on the basis that such rates constitute predatory practices in contravention of the transportation policy set forth in section 10101(a) of this title. However, pending final Commission action in a proceeding under section 10708 of this title to determine whether a proposed rate for the transportation of household goods for the United States Government under this subsection is predatory or not, the Commission may suspend the proposed rate under subsection (b) of such section 10708 only if it appears from specific facts shown by the verified complaint of a person that —

(A) without suspension, the proposed rate will cause substantial injury to the complainant; and

(B) it is likely that the complainant will prevail on the merits.

(c) A different policy, rule of rate making, system of accounting, method of determining costs of transportation, value of property, or rate of return may not be

applied to a water carrier owned or controlled by the United States Government than is applied to a water carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title.

(Pub.L. 95-473, Oct. 17, 1978, 92 Stat. 1383; Pub.L. 96-454, § 10(b), Oct. 15, 1980, 94 Stat. 2022.)

10731. Investigation of discriminatory rail rates for transportation of recyclable or recycled materials

(a) In this section —

(1) "recyclable material" means material collected or recovered from waste for a commercial or industrial use whether the collection or recovery follows end usage as a product.

(2) "virgin material" means raw material, including previously unused metal or metal ore, woodpulp or pulpwood, textile fiber or material, or other resource that, through the application of technology, is or will become a source of raw material for commercial or industrial use.

(b) When appropriate, the Interstate Commerce Commission shall —

(1) investigate the rate structure for the transportation of recyclable or recycled materials and competing virgin material by rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title and the manner in which that rate structure has been affected by successive general rate increases approved by the Commission for those carriers;

(2) determine whether those rate increases affect any part of the rate structure in violation of section 10701 or

10741 of this title and order the rate found to be in violation of either of those sections removed from the rate structure; and

(3) report to the President and Congress, in each of the annual reports of the Commission for 1978 and 1979, and in other appropriate reports, all proceedings started or completed under this subsection.

(c) A determination under subsection (b)(2) of this section may be made only after a public hearing. During the hearing, the rail carriers have the burden of proving that rate increases that affect the rate structure applicable to the transportation of those competing materials comply with sections 10701 and 10741 of this title.

(d) In cooperation with the Commission, the Secretary of Transportation shall maintain a research, development, and demonstration program to develop and improve transport terminal operations, transport service characteristics, transport equipment, and collection and processing methods to facilitate the competitive and efficient transportation of recyclable or recycled materials by rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title.

(e) Notwithstanding any other provision of this title or any other law, within 90 days after the effective date of the Staggers Rail Act of 1980, all rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title shall take all actions necessary to reduce and thereafter maintain rates for the transportation of recyclable or recycled materials, other than recyclable or recycled iron or steel, at revenue-to-variable cost ratio levels that are equal to or less than the average revenue-to-variable cost ratio that

rail carriers would be required to realize, under honest, economical, and efficient management, in order to cover total operating expenses, including depreciation and obsolescence, plus a reasonable and economic profit or return (or both) on capital employed in the business sufficient to attract and retain capital in amounts adequate to provide a sound transportation system in the United States. As long as any such rate equals or exceeds such average revenue-to-variable cost ratio established by the Commission, such rate shall not be required to bear any further rate increase. The Commission shall have jurisdiction to issue all orders necessary to enforce the requirements of this subsection.

(Pub.L. 95-473, Oct. 17, 1978, 92 Stat. 1389; Pub.L. 96-448, Title II, § 204, Oct. 14, 1980, 94 Stat. 1905.)

§ 10733. Rates for transportation of recyclable materials

(a) A motor carrier of property providing transportation subject to the jurisdiction of the Commission under subchapter II or chapter 105 of this title may provide transportation of recyclable materials without charge or at a reduced rate.

(b) In this section, "recyclable materials" means waste products for recycling or reuse in the furtherance of recognized pollution control programs.

(Added Pub.L. 96-296, § 32(a), July 1, 1980, 94 Stat. 824.)

§ 10741. Prohibitions against discrimination by common carriers

(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may

not charge or receive from a person a different compensation (by using a special rate, rebate, drawback, or another means) for a service rendered, or to be rendered, in transportation the carrier may perform under this subtitle than it charges or receives from another person for performing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances. A common carrier that charges or receives such a different compensation for that service unreasonably discriminates.

(b) A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title may not subject a person, place, port, or type of traffic to unreasonable discrimination. However, subject to subsection (c) of this section, this subsection does not apply to discrimination against the traffic of another carrier providing transportation by any mode.

(c) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of that chapter may not subject a household goods freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of that chapter to unreasonable discrimination whether or not the household goods freight forwarder is controlled by that carrier.

(d) Differences between the rates, classifications, rules, and practices of water and rail common carriers in effect for their respective types of transportation do not constitute a violation of this section or an unfair or destructive competitive practice under this subtitle.

(e) Differences between rates, classifications, rules, and practices of rail carriers providing transportation

subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title do not constitute a violation of this section if such differences result from different services provided by rail carriers.

(f) This section shall not apply to—

(1) contracts approved under section 10713 of this title, other than as provided in subsection (d)(2)(A)(ii) and (d)(2)(B) of such seciton;

(2) surcharges or cancellations under section 10705a of this title;

(3) separate rates for distinct rail services under section 10728 of this title;

(4) rail rates applicable to different routes; or

(5) expenses authorized under section 10751 of this title,

except that with respect to rates described in paragraphs (2), (3), and (4) nothing in this subsection shall affect the authority of the Commission under this section with respect to rate relationships between ports or within the same port.

(Pub.L. 95-473, Oc. 17, 1978, 92 Stat. 1390; Pub.L. 96-296, § 33(d), July 1, 1980, 94 Stat. 825; Pub.L. 96-448, Title II, § 212, Oc. 14, 1980, 94 Stat. 1912; Pub.L. 99-521, § 7(h), Oct. 22, 1986, 100 Stat. 2995.)

§ 10761. Transportation prohibited without tariff

(a) Except as provided in this subtitle, a carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title shall provide that transportation or service only if the rate for the transportation or service is

contained in a tariff that is in effect under this subchapter. That carrier may not charge or receive a different compensation for that transportation or service than the rate specified in the tariff whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device.

(b) The Commission may grant relief from subsection (a) of this section to contract carriers when relief is consistent with the public interest and the transportation policy of section 10101 of this title. The Commission may begin a proceeding under this subsection on application of a contract carrier or group of contract carriers and on its own initiative for a water contract carrier or group of water contract carriers.

(c) This section shall not apply to expenses authorized under section 10751 of this title.

(Pub.L. 95-473, Oct. 17, 1978, 92 Stat. 1394; Pub.L. 96-296, § 33(c), July 1, 1980, 94 Stat. 825).

§ 10762. General tariff requirements

(a)(1) A carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title (except a motor common carrier) shall publish and file with the Commission tariffs containing the rates and (A) if a common carrier, classifications, rules, and practices related to those rates, and (B) if a contract carrier, rules and practices related to those rates, established under this chapter for transportation or service it may provide under this subtitle. A motor common carrier shall publish and file with the Commission tariffs containing the rates for transportation it may provide under this subtitle. The Commission may prescribe other information that motor

common carriers shall include in their tariffs. A motor contract carrier that serves only one shipper and has provided continuous transportation to that shipper for at least one year or a motor carrier of property providing transportation under a certificate to which the provisions of section 10922(b)(4)(E) of this title apply or under a permit to which the provisions of section 10923(b)(5) of this title apply may file only its minimum rates unless the Commission finds that filing of actual rates is required in the public interest.

(2) Carriers that publish tariffs under paragraph (1) of this subsection shall keep them open for public inspection. A rate contained in a tariff filed by a common carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter II, III, or IV of chapter 105 shall be stated in money of the United States. A tariff filed by a motor or water contract carrier or by a household goods freight forwarder providing transportation or service subject to the jurisdiction of the Commission under subchapter II, III, or IV of that chapter, respectively, may not become effective for 30 days after it is filed.

(b)(1) The Commission shall prescribe the form and manner of publishing, filing, and keeping tariffs open for public inspection under this section. The Commission may prescribe specific charges to be identified in a tariff published by a common carrier providing transportation or service subject to its jurisdiction under subchapter I, III, or IV of that chapter, but those tariffs must identify plainly —

(A) the places between which property and passengers will be transported;

(B) terminal, storage, and icing charges (stated separately) if a carrier providing transportation subject to the jurisdiction of the Commission under subchapter 1 of that chapter;

(C) terminal charges if a common carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter III or IV of that chapter;

(D) privileges given and facilities allowed; and

(E) any rules that change, affect, or determine any part of the published rate.

(2) A joint tariff filed by a carrier providing transportation subject to the jurisdiction of the Commission under subchapter 1 of that chapter shall identify the carriers that are parties to it. The carriers that are parties to a joint tariff, other than the carrier filing it, must file a concurrence or acceptance of the tariff with the Commission but are not required to file a copy of the tariff. The Commission may prescribe or approve what constitutes a concurrence or acceptance.

(c)(1) When a common carrier providing transportation or service subject to the jurisdiction of the Commission (A) under subchapter I of chapter 105 of this title proposes to change a rate, or (B) under another subchapter of that chapter proposes to change a rate, classification, rule, or practice, the carrier shall publish, file, and keep open for public inspection a notice of the proposed change as required under subsections (a) and (b) of this section.

(2) When a contract carrier providing transportation subject to the jurisdiction of the Commission under subchapter II or III of chapter 105 of this title proposes to establish a new rate or to reduce a rate, directly or by

changing a rule or practice related to the rate or the value of service under the rate, the carrier shall publish, file, and keep open for public inspection a notice of the new or reduced rate as required under subsection (a) and (b) of this section.

(3) A notice filed under this subsection shall plainly identify the proposed change or new or reduced rate and indicate its proposed effective date. In the case of a carrier other than a rail carrier and motor common carrier of passengers with respect to special or charter transportation, a proposed rate change or a new or reduced rate may not become effective for 30 days after the notice is published, filed, and held open as required under subsections (a) and (b) of this section. In the case of a rail carrier, a proposed rate change resulting in an increased rate or a new rate shall not become effective for 20 days after the notice is published and a proposed rate change resulting in a reduced rate shall not become effective for 10 days after the notice is published, except that a contract authorized under section 10713 of this title shall become effective in accordance with the provisions of such section. In the case of a motor common carrier of passengers, a proposed rate change resulting in an increased rate or a new rate applicable to special or charter transportation shall not become effective for 30 days after the notice is published, and a proposed rate change resulting in a reduced rate applicable to special or charter transportation shall not become effective for 10 days after the notice is published.

(d)(1) The Commission may reduce the notice period of subsections (a) and (c) of this section if cause exists. The Commission may change the other requirements of this section if cause exists in particular instances or as they apply to special circumstances.

(2) The Commission may prescribe regulations for the simplification of tariffs by carriers providing transportation subject to its jurisdiction under subchapter I of chapter 105 of this title and permit them to change rates, classifications, rules, and practices without filing complete tariffs that cover matter that is not being changed when the Commission finds that action to be consistent with the public interest. Those carriers may publish new tariffs that incorporate changes or plainly indicate the proposed changes in the tariffs then in effect and kept open for public inspection. However, the Commission shall require that all rates of rail carriers and rail ratemaking associations be incorporated in their individual tariffs by the end of the 2d year after initial publication of the rate, or by the end of the 2d year after a change in a rate becomes effective, whichever is later. The Commission may extend those periods if cause exists, but if it does, it must send a notice of the extension and a statement of the reasons for the extension to Congress. A rate not incorporated in an individual tariff as required by the Commission is void.

(e) The Commission may reject a tariff submitted to it by a common carrier under this section if that tariff violates this section or regulation of the Commission carrying out this section.

(f) The Commission may grant relief from this section to contract carriers when relief is consistent with the public interest and the transportation policy of section 10101 of this title. The Commission may begin a proceeding under this subsection on application of a contract carrier or group of contract carriers and on its own initiative for a water contract carrier or group of water contract carriers.

(g) The Commission shall streamline and simplify, to the maximum extent practicable, the filing requirements applicable under this section to motor common carriers of property with respect to transportation provided under certificates to which the provisions of section 10922(b)(4)(E) of this title apply and to motor contract carriers of property with respect to transportation provided under permits to which the provisions of section 10923(b)(5) of this title apply.

(Pub.L. 95-473, Oct. 17, 1978, 92 Stat. 1394; Pub.L. 96-296, § 5(c), July 1, 1980, 94 Stat. 796; Pub.L. 96-448, Title II, § 216, Oct. 14, 1980, 94 Stat. 1915; Pub.L. 97-261, § 12(b), Sept. 20, 1982, 96 Stat. 1113; Pub.L. 99-521, § 7(k), Oct. 22, 1986, 100 Stat. 2995.)

APPENDIX D

**Delta Traffic Service, Inc. and System 99*
v. Deseret Industries
United States Bankruptcy Court
Northern District of California
Adversary Proceeding No. 4 87 0347 AJ

**Delta Traffic Service, Inc. and System 99*
v. Chamlian Enterprises, Inc., etc. et al.
United States District Court
Eastern District of California
Case No. CV F 87 620 REC

**Delta Traffic Service, Inc. and System 99*
v. State Center Mills
United States District Court
Eastern District of California
Case No. CV F 88 395 EDP

**Delta Traffic Service, Inc. and System 99*
v. American Waste Unlimited
United States District Court
Central District of California
Case No. CV 87 7316 CBM

**West Coast Truck Lines, Inc.*
v. Hamilton Manufacturing & Distributing, Inc.
United States District Court
District of Idaho
Case No. CIV 88 1011

**West Coast Truck Lines, Inc.*
v. Spencer Smith, an individual dba American Recycling Center
United States District Court
District of Idaho
Case No. CIV 88 4026

Motor Carrier Audit & Collection Company
v. Rubi Metals, Inc.
United States District Court
District of New Mexico
Case No. CIV 87 1379 JC

Motor Carrier Audit & Collection Company
v. Acme Iron & Metal, Inc.
United States District Court
District of New Mexico
Case No. CIV 87 1383 JC

Motor Carrier Audit & Collection Company
v. Southwest Scrap Metal
United States District Court
District of New Mexico
Case No. CIV 87 1380 JP

Motor Carrier Audit & Collection Company
v. Buffalo Sanitary Wipers, Inc.
Superior Court of the State of Washington
County of King
Case No. 87-2-19305-5

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* All of the above cases have been stayed pending the decision in *West Coast Truck Lines, Inc. v. Arcata Community Recycling Center, Inc.*

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On August 2, 1988, I served the within Petition for Writ of Certiorari in re: "West Coast Truck Lines, Inc. -v- Arcata Community Recycling Center" in the United States Supreme Court, October Term 1988.

On the Parties in said action, by placing three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

Steven Gompertz, Esq.
1642 "G" Street
Arcata, California 95521

All parties required to be served have been served.

I certify, under penalty of perjury, that the foregoing is true and correct.

Executed on August 2, 1988, at Los Angeles, California

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